

DECISIONS

COUNCIL DECISION (EU) 2018/2059

of 29 November 2018

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning the amendment of Annex IX (Financial Services) to the EEA Agreement

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area ⁽¹⁾, and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area ⁽²⁾ ('the EEA Agreement') entered into force on 1 January 1994.
- (2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Annex IX to that Agreement, which contains provisions on financial services.
- (3) Regulation (EU) 2015/847 of the European Parliament and of the Council ⁽³⁾ is to be incorporated into the EEA Agreement.
- (4) Directive (EU) 2015/849 of the European Parliament and of the Council ⁽⁴⁾ is to be incorporated into the EEA Agreement.
- (5) Commission Delegated Regulation (EU) 2016/1675 ⁽⁵⁾ is to be incorporated into the EEA Agreement.
- (6) Annex IX to the EEA Agreement should therefore be amended accordingly.
- (7) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft decisions,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, within the EEA Joint Committee on the proposed amendment of Annex IX (Financial Services) to the EEA Agreement, shall be based on the draft decisions of the EEA Joint Committee attached to this Decision.

⁽¹⁾ OJ L 305, 30.11.1994, p. 6.

⁽²⁾ OJ L 1, 3.1.1994, p. 3.

⁽³⁾ Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1).

⁽⁴⁾ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

⁽⁵⁾ Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies (OJ L 254, 20.9.2016, p. 1).

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 29 November 2018.

For the Council
The President
M. SCHRAMBÖCK

DRAFT

DECISION OF THE EEA JOINT COMMITTEE No .../...
of ...
amending Annex IX (Financial services) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Article 98 thereof,

Whereas:

- (1) Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 ⁽¹⁾ is to be incorporated in the EEA Agreement.
- (2) Regulation (EU) 2015/847 repeals Regulation (EC) No 1781/2006 which is incorporated into the EEA Agreement and which is consequently to be repealed under the EEA Agreement.
- (3) Annex IX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Annex IX to the EEA Agreement shall be amended as follows:

1. The text of point 23ba (Commission Directive 2006/70/EC) is replaced by the following:

'32015 R 0847: Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1).

The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptation:

By way of derogation from Articles 4 and 6, as regards transfers of funds in Swiss Francs in Liechtenstein and from and to Liechtenstein within its Currency Union with Switzerland, the information required by Articles 4 and 6 shall be collected and made available when requested by the payment service provider of the payee within three working days, but need not be transferred immediately with the transfers of funds as foreseen in Articles 4 and 6. This derogation shall be applicable for a transitional period expiring on 31 December 2022.'

2. The text of point 23d (Regulation (EC) No 1781/2006 of the European Parliament and of the Council) is deleted.

Article 2

The text of Regulation (EU) 2015/847 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on [...], provided that all the notifications under Article 103(1) of the EEA Agreement have been made (*) or on the day of the entry into force of Decision of the EEA Joint Committee No .../... of ... ⁽²⁾ [incorporating AMLD IV (celex 32015L0849) into the EEA Agreement], whichever is the later.

⁽¹⁾ OJ L 141, 5.6.2015, p. 1.

^(*) [No constitutional requirements indicated.] [Constitutional requirements indicated.]

⁽²⁾ OJ L ...

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels,

For the EEA Joint Committee

The President

The Secretaries to the EEA Joint Committee

DRAFT

DECISION OF THE EEA JOINT COMMITTEE No .../...
of ...
amending Annex IX (Financial services) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Article 98 thereof,

Whereas:

- (1) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC ⁽¹⁾ is to be incorporated into the EEA Agreement.
- (2) Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies ⁽²⁾ is to be incorporated into the EEA Agreement.
- (3) Directive (EU) 2015/849 repeals Directive 2005/60/EC of the European Parliament and of the Council ⁽³⁾ and Commission Directive 2006/70/EC ⁽⁴⁾, which are incorporated into the EEA Agreement and which are consequently to be repealed under the EEA Agreement.
- (4) Annex IX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Annex IX to the EEA Agreement shall be amended as follows:

1. The text of point 23b (Directive 2005/60/EC of the European Parliament and of the Council) is replaced by the following:

'32015 L 0849: Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptation:

- (a) Point (d) of Article 3(4) shall be replaced by the following:

“fraud affecting the Union’s financial interests, where it is at least serious, as defined below:

- (i) in respect of expenditure, any intentional act or omission relating to:
 - the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Union or budgets managed by, or on behalf of, the European Union,
 - non-disclosure of information in violation of a specific obligation, with the same effect,
 - the misapplication of such funds for purposes other than those for which they were originally granted;

⁽¹⁾ OJ L 141, 5.6.2015, p. 73.

⁽²⁾ OJ L 254, 20.9.2016, p. 1.

⁽³⁾ OJ L 309, 25.11.2005, p. 15.

⁽⁴⁾ OJ L 214, 4.8.2006, p. 29.

- (ii) in respect of revenue as defined in Council Decision of 29 September 2000 on the system of the European Communities' own resources ⁽¹⁾ any intentional act or omission relating to:
- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Union or budgets managed by, or on behalf of, the European Union,
 - non-disclosure of information in violation of a specific obligation, with the same effect,
 - misapplication of a legally obtained benefit, with the same effect.

Serious fraud shall be considered to be fraud involving a minimum amount not to be set at a sum exceeding Euro 50 000.”

2. The text of point 23ba (Commission Directive 2006/70/EC) is replaced by the following:

‘**32016 R 1675**: Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies (OJ L 254, 20.9.2016, p. 1).’

3. The following indent is added in point 31bc (Regulation (EU) No 648/2012 of the European Parliament and of the Council):

‘— **32015 L 0849**: Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 (OJ L 141, 5.6.2015, p. 73).’

Article 2

The texts of Directive (EU) 2015/849 and Delegated Regulation (EU) 2016/1675, in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on [...], provided that all the notifications under Article 103(1) of the EEA Agreement have been made (*).

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels,

For the EEA Joint Committee

The President

The Secretaries to the EEA Joint Committee

⁽¹⁾ OJ L 253, 7.10.2000, p. 42.

(*) [No constitutional requirements indicated.] [Constitutional requirements indicated.]

Declaration of the EFTA States**to Decision No [...] incorporating Directive (EU) 2015/849 into the EEA Agreement**

Directive (EU) 2015/849 contains provisions with references to acts adopted under Title V TFEU. It is recalled that the incorporation of acts with such provisions into the EEA Agreement is without prejudice to the understanding that European Union legislation adopted pursuant to Title V TFEU falls outside the scope of the EEA Agreement.

Joint Declaration by the Contracting Parties**to Decision No [...] incorporating Directive (EU) 2015/849 into the EEA Agreement**

The Contracting Parties have agreed to include serious fraud affecting the financial interests of the European Union in the list of predicate offences to money laundering. For practical reasons, the Fourth Money Laundering Directive (Directive (EU) 2015/849) has been incorporated without a reciprocal agreement likewise to protect the financial interests of the EEA EFTA States. Nevertheless, the principles of reciprocity and homogeneity as laid down in Article 1 of the EEA Agreement and referred to in Recital 4 thereof, remain fully applicable also to the mutual protection against criminal activity affecting the financial interests of the Contracting Parties within the meaning of [this Decision].
